

## § 27.315

Assistant Secretary's Finding, Determination, or Order.

(6) Each Application for Review shall be accompanied by all legal memoranda, other documents, declarations, affidavits, and other evidence supporting the position asserted by the Applicant.

(c) *Response.* The Assistant Secretary, through the Office of General Counsel, shall file and serve a Response, accompanied by all legal memoranda, other documents, declarations, affidavits and other evidence supporting the position asserted by the Assistant Secretary within fourteen calendar days of the filing and service of the Application for Review and all supporting papers.

(d) *Procedural Modifications.* The Secretary may, in exigent circumstances (as determined in his sole discretion):

(1) Lift any stay applicable to any Order under § 27.300;

(2) Modify the time for a response;

(3) Rule on the sufficiency of Applications for Review; or

(4) Otherwise modify these procedures with respect to particular matters.

## § 27.315 Presiding officers for proceedings.

(a) Immediately upon the filing of any Application for Review, the Secretary shall appoint an attorney, who is employed by the Department and who has not performed any investigative or prosecutorial function with respect to the matter, to act as a neutral adjudications officer or Presiding Officer for the compilation of a factual record and the recommendation of an Initial Decision for each Proceeding.

(b) Notwithstanding paragraph (a) of this section, the Secretary may appoint one or more attorneys who are employed by the Department and who do not perform any investigative or prosecutorial function with respect to this subpart, to serve generally in the capacity as Presiding Officer(s) for such matters pursuant to such procedures as the Secretary may hereafter establish.

## 6 CFR Ch. I (1–1–11 Edition)

## § 27.320 Prohibition on ex parte communications during proceedings.

(a) At no time after the designation of a Presiding Officer for a Proceeding and prior to the issuance of a Final Decision pursuant to § 27.345 with respect to a facility or other person, shall the appointed Presiding Officer, or any person who will advise that official in the decision on the matter, discuss *ex parte* the merits of the proceeding with any interested person outside the Department, with any Department official who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person.

(b) If, after appointment of a Presiding Officer and prior to the issuance of a Final Decision pursuant to § 27.345 with respect to a facility or other person, the appointed Presiding Officer, or any person who will advise that official in the decision on the matter, receives from or on behalf of any party, by means of an *ex parte* communication, information which is relevant to the decision of the matter and to which other parties have not had an opportunity to respond, a summary of such information shall be served on all other parties, who shall have an opportunity to reply to the *ex parte* communication within a time set by the Presiding Officer.

(c) The consideration of classified information or CVI pursuant to an in camera procedure does not constitute a prohibited *ex parte* communication for purposes of this subpart.

## § 27.325 Burden of proof.

The Assistant Secretary bears the initial burden of proving the facts necessary to support the challenged administrative action at every proceeding instituted under this subpart.

## § 27.330 Summary decision procedures.

(a) The Presiding Officer appointed for each Proceeding shall immediately consider whether the summary adjudication of the Application for Review is appropriate based on the Application for Review, the Response, and all the supporting filings of the parties pursuant to §§ 27.310(b)(5) and 27.310(c).